

1 MONDAY, JANUARY 7, 2013

2 AFTERNOON SESSION

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4 The matter of JOAN BOICE, by and through her
5 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE
6 BOICE, and MARK BOICE, individually, Plaintiffs, versus
7 EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS,
8 Defendant, Case Number 34-2009-00063714, came on regularly
9 this day before Honorable JUDY HOLZER HERSHER, Judge of the
10 Superior Court of California, for the County of Sacramento,
11 Department 45.

12 The Plaintiffs, JOAN BOICE, by and through her
13 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE
14 BOICE and MARK BOICE, were represented by LESLIE A.
15 CLEMENT, Attorney at Law; VALERIE DAWSON, Attorney at Law;
16 ASHLEY BAIRD, Attorney at Law; and SEAN LAIRD, Attorney at
17 Law.

18 The Plaintiffs, ERIC BOICE, NANCEE BOICE and ERIC
19 BOICE were present.

20 The Defendant, EMERITUS CORPORATION dba EMERITUS AT
21 EMERALD HILLS, was represented by BRYAN R. REID, Attorney
22 at Law; RIMA BADAWIYA, Attorney at Law; and KIM M. WELLS,
23 Attorney at Law.

24 Also present on behalf of the Defendant, EMERITUS
25 CORPORATION dba EMERITUS AT EMERALD HILLS, was JANET E.
26 McKINNON, Vice President of Legal Affairs; LISA HULSE, Vice
27 President Quality & Risk Management; and HOLLY A. FORD,
28 Trial Consultant.

1 **(The following proceedings were then had in open**
2 **court, in the presence of the jury.)**

3 THE COURT ATTENDANT: All rise.

4 Department 45 of the Superior Court of California,
5 in and for the County of Sacramento, is now in session.
6 The Honorable Judy Hersher judge presiding.

7 Please be seated and come to order.

8 THE COURT: Okay. Miss Shear, where are you?

9 ALTERNATE JUROR: (Indicating).

10 THE COURT: We will accommodate you.

11 Ladies and gentlemen, apparently we have a little
12 bit of a dental emergency. So here's what we're going to
13 do timing-wise. We are going to finish with the opening
14 arguments -- I'm sorry, opening statement by Mr. Reid. And
15 then rather than take our first witness, we will stop and
16 pick up tomorrow morning with the first witness.

17 I don't want anybody walking around with problems
18 during the trial. Okay?

19 So, Mr. Reid.

20 MR. REID: Good afternoon, ladies and gentlemen.

21 JURORS IN UNISON: Good afternoon.

22 MR. REID: This is never a good time. Before lunch
23 you're hungry and after lunch you're full. So I'll try to
24 keep moving along, and we'll get out early for sure.

25 Before lunch, we were kind of walking through the
26 evidence and that chronology of Joan Boice's journey. And
27 recall that after the visit when Eric Boice and Myron Boice
28 took Joan to see Dr. Awan on November 4th, Dr. Awan then

1 ordered that home health -- or the physical therapy
2 evaluation, which occurred on November 6th.

3 If you could put up slide 22.

4 MS. FORD: We're trying to get the projector turned
5 on there, Mr. Reid.

6 MR. REID: Oh. All right.

7 MS. FORD: That's me. Just give me a minute.

8 You asked for 26?

9 MR. REID: 22.

10 THE COURT: There we go.

11 MR. REID: So here's -- this is a -- an example of
12 the kind of evidence that I expect you'll see in trial
13 concerning the notes that we obtained from Kaiser relative
14 to when they went to Emerald Hills to do their job as
15 healthcare providers with Joan Boice.

16 As you can see, this is on November 6th of 2008.
17 The physical therapist, she did her evaluation. And Joan
18 Boice's son Eric was present. They found Joan to be
19 lethargic and difficult to wake up that morning. There's a
20 lot of discussion about what -- what was seen and what was
21 done. They talked -- now, the physical therapist spoke
22 with the staff at Emerald Hills and Eric Boice, and they
23 agreed on some training for range of motion exercises to
24 keep the extremities moving and to try to prevent the
25 tightness and the -- you know, the lack of use of the right
26 side after stroke.

27 And as you'll see in this trial then, there's this
28 continued pattern where the Kaiser staff are working with

1 the Emerald Hills staff and guiding them, and working with
2 the family to try to help Mrs. Boice as she moves forward.

3 They discussed -- the physical therapist discussed
4 the care plan with Alicia, who you've heard of, heard
5 about. She's the head of the Memory Care Unit. And
6 they're all in agreement.

7 Now -- then the physical therapist came back on
8 November 12th. You'll hear about that. On November 14th
9 of 2008 --

10 Can you pull up slide 24.

11 Now, recall that you've heard that there will be
12 evidence about a bunion that developed on Mrs. Boice's
13 foot. And it was actually this -- you'll see -- the
14 evidence will establish that it was actually on November
15 14th when one of the care staff at Emerald Hills identified
16 what they reported as draining and a wound on the right
17 metatarsal. So it was actually, as you'll find out,
18 Emerald Hills staff that made that observation and reported
19 it to the physical therapist. And the physical therapist
20 now starts discussing this pressure ulcer on the metatarsal
21 head. That also then became known as "the bunion."

22 I'm standing right in your way. I apologize.

23 ALTERNATE JUROR: That's okay. I can --

24 MR. REID: Okay. With that development --

25 If you can pull up slide 25, please.

26 With that development of that bunion or wound on the
27 right foot then, Kaiser Home Health, and in particular
28 their social worker, who's coordinating the care on behalf

1 of Kaiser you'll find out, issues a request for skilled
2 nursing to now go out to Emerald Hills, to monitor and
3 assist with Mrs. Boice's care.

4 So it's November 17th that -- there's -- the care
5 staff from Kaiser is now being added to by having nurses go
6 out.

7 Excuse me.

8 And that's a good example of the type of evidence
9 you'll see in trial.

10 Now, the next day, November 18th, is the day that
11 the -- one of the nurses did go to Emerald Hills on behalf
12 of Kaiser and did a nursing assessment. And you'll learn
13 that on November 18th -- now, we're about 14 days since
14 Dr. Awan first diagnosed the strokes -- that on that --
15 during that assessment, the nurse from Kaiser did what's
16 called a Braden Scale assessment. A Braden Scale is a
17 scale, you'll come to learn, that's used to determine --
18 help determine one's -- whether someone is vulnerable to
19 skin breakdown. And there are different criteria that a
20 healthcare practitioner will look at to try to, you know,
21 say, *Is this person likely to break down or not likely to*
22 *break down?* And, in fact, you'll learn that Mrs. Boice,
23 because of her multiple health conditions, was determined
24 to be high risk for skin breakdown as of November 18th, as
25 assessed by the Kaiser nurse.

26 The Kaiser nurse, you'll learn, noted that
27 Mrs. Boice was -- had almost constant friction to the skin
28 and, therefore, the Kaiser nurse made the recommendation

1 that Kaiser Home Health, you'll learn, should come out to
2 Emerald Hills three times a week for the first week and
3 then two times a week for three weeks thereafter.

4 And in a little while I'll share with you -- and it
5 will become apparent during trial -- that on each of these
6 visits there's training that takes place between the Kaiser
7 folks and the Emerald Hills folks. And often times, the
8 family's involved, too.

9 In the -- in this time frame there is also a family
10 meeting that takes place at Emerald Hills, you'll learn,
11 with Eric and his wife, Kathleen Boice. And they meet with
12 Nancy Cordova, the Executive Director, and Peggy Stevenson,
13 the Resident Care Director, the nurse.

14 There will be various different types of evidence
15 concerning what was discussed at the meeting and whether --
16 you'll have to ultimately make a decision about the nature
17 of the discussion and whether it was complaints and
18 concerns or -- that's part of the process that we'll be
19 going through.

20 But during the course of that meeting on November
21 17th, you'll come to learn that there was a discussion
22 about possibly qualifying Mrs. Boice for hospice care. And
23 in this trial you'll learn about hospice care. Hospice
24 care is palliative comfort care that's delivered when one
25 reaches the last months of their life, as determined by a
26 physician.

27 And so given the course that had taken place in
28 those -- in the months preceding the November 17th meeting,

1 there was a discussion and an expressed desire to explore
2 hospice care that can be delivered, you'll find out, in
3 assisted living.

4 What you'll learn is that once someone qualifies for
5 hospice care, then the Home Health -- in this instance,
6 Kaiser -- would be providing that level of care, too. The
7 hospice -- it's not the non-healthcare provider doing the
8 hospice care, but it allows one to do what you'll hear is
9 "age in place." It's a measure to try to allow elderly
10 folks reaching the end of their life to spend their last
11 days in their home, wherever that happens to be. And there
12 was an effort and a discussion and a expressed desire by
13 the Boice family, you'll learn, that Mrs. Boice should stay
14 at Emerald Hills on Hospice care.

15 Can you pull up slide 27, please.

16 In this trial, you'll come to learn that Kathleen
17 Boice, Eric Boice's wife, played a very significant and
18 meaningful role in her mother-in-law's care, which -- which
19 is admirable thing. She was very active in the meetings
20 and the discussions. And this is one example of the type
21 of evidence you'll see of communications that were taking
22 place, particularly starting November 17th, after the
23 meeting.

24 And in this instance, Miss Kathleen Boice has
25 communicated with Nancy and Peggy. And you'll learn she's
26 thanking them for taking the time to meet with her and
27 Eric. They appreciated being heard and about their
28 concerns and to brainstorm about Mrs. Boice's ongoing care.

1 And there was also -- during the course of that meeting, it
2 was discussed that Kaiser's nurse was going to come out and
3 do the home health nursing assessment, so she's asking,
4 *Have you heard about that?*

5 Now, the assessment took place on the 18th. We've
6 talked about that. Then on the 19th --

7 If you can go to 28, please. There we go.

8 As of November 19th, 2008, the day after Kaiser's
9 Home Health nurse came out and did the assessment, we're
10 now on a two-track system. And you'll learn in this case
11 that one of the tracks that Kaiser implemented was a
12 possible transfer of Mrs. Boice to a skilled nursing
13 facility.

14 Recall the unartful chart that I drew. Transfer
15 from Emerald Hills over into the institutional setting of
16 skilled nursing. And here is one of the first steps to
17 initiate that. That, you'll learn, is another very
18 reasonable and appropriate option available to the Boice
19 family. Stay at Emerald Hills on hospice or move to a
20 skilled nursing facility.

21 Now, during the next two weeks, you'll come to learn
22 during the trial, there are repeated daily communications
23 between the Boice family, the Emerald Hills staff and the
24 Kaiser caregivers to try to discuss and figure out, *Okay.*
25 *What's going to be the next step, hospice or skilled*
26 *nursing?*

27 In the meantime, while that's going on, the Home
28 Health nurses are coming to Emerald Hills and providing the

1 wound care.

2 Can you pull up slide 29, please.

3 I apologize. These all -- these events took place
4 in 2008. And so in getting the documents, we have some
5 where they've -- margins have been lost to time. But
6 here's a good example of the kinds of communications you'll
7 hear about where -- with the efforts of coordinated care
8 between these participants.

9 On November -- Wednesday, November 19th, this is an
10 e-mail from the Executive Director Nancy Cordova, and she's
11 e-mailing Ms. Kathleen Boice. And she's letting her know,
12 *Home Health is here right now. And I called hospice and*
13 *they're trying to get an order from Dr. Awan, the evidence*
14 *will be. We had the Home Health nurse call while she was*
15 *sitting with us, to go through the back line to try to get*
16 *to Dr. Awan, but Dr. Awan is out.*

17 Joyce, the Home Health nurse, did the visit with her
18 mom. She's discussing the status of the wound on the foot.
19 It does not appear to be infected, but it does have some
20 swelling. And they spoke with Misty and Joyce, all folks
21 involved on the Kaiser side and -- *to make sure we're all*
22 *on the same page. And they'll keep the Boice family*
23 *updated.*

24 Could you pull up slide 30.

25 In response, you will hear Mrs. Boice wrote back --
26 Mrs. Kathleen Boice -- and said "Thank you." *And hospice*
27 *eligible is something we want to pursue. We want Joan*
28 *Boice to stay at Emerald Hills and go on hospice care.*

1 Pull up slide 31, please.

2 On November 20th, more communications, you'll see.

3 On this occasion, Nancy Cordova is keeping tabs,
4 keeping up with Miss Boice, Miss Kathleen Boice. There's
5 some phone tag between Peggy, a resident care director, and
6 Misty. And it goes on and on. But she does report --
7 Nancy Cordova reports that: I supervised some training
8 with the resident assistants, training done by the nurse,
9 mostly range of motion and repositioning. And Joan Boice
10 was smiling and participating.

11 November 20th. That's what the evidence is going to
12 show.

13 November 20th --

14 If you could pull up slide 32.

15 On November 20th, there's now communication that
16 there has been an okay from the State to the Boice family
17 that hospice is approved. And the response from the Boice
18 family is very positive to that.

19 There's more treatment on the 21st. The nurse from
20 Kaiser comes back. And then on November 24th --

21 Pull up slide 34, please.

22 The Emerald Hills staff does their third assessment,
23 third evaluation of Mrs. Boice. November 24th, they do
24 another one of these computer -- computer entry
25 evaluations. And it is on this evaluation you'll learn, on
26 November 24th, where now Mrs. Boice is noted to be a
27 two-person assist. Two-person assist on November 24th,
28 2009.

1 Now, the evidence is going to establish a two-person
2 assist is something that's not ordinarily appropriate for
3 assisted living. However, it is appropriate when one is on
4 hospice care. But clearly, Mrs. Boice's condition has
5 continued to decline. And as Kaiser and the family and the
6 Emerald Hills staff are trying to coordinate the best next
7 step, this assessment establishes that something needs to
8 happen.

9 November 25th, there's another nurse assessment by
10 the Kaiser nurses.

11 November 28th, the nurses from Kaiser are back in
12 again, you'll learn, doing their treatment and their
13 training.

14 Now, through this whole process the nurses from
15 Kaiser, you'll learn, have been treating that foot, that
16 wound on the right foot, the bunion.

17 Could you pull up slide 35, please.

18 On November 30th, there's been a change. And you'll
19 learn in this case that between November 28th and November
20 30th, Mrs. Boice's skin has deteriorated more. And the
21 staff at Emerald Hills identified that. And you'll learn
22 that the staff at Emerald Hills reached out to Kaiser and
23 said, *Hey, look, she's got more pressure areas now.*

24 This is a communication -- a care communication that
25 you'll -- from Peggy Stevenson -- that you'll learn about
26 in this trial:

27 Joan now has numerous skin
28 areas. She has gotten a few more

1 pressure sores since her last
2 visit with a nurse. She has one
3 on each foot, one on her right
4 butt cheek, right arm, inside, and
5 she is continually getting red
6 areas that we're worried will
7 become broken sores as well.

8 So she's taken a turn for the worst. And that's
9 communicated to her healthcare team.

10 Pull up slide 36, please.

11 So that was November 30th. The next day, Kaiser's
12 Home Health nurses come back to Emerald Hills and they do
13 another assessment. This is -- you'll learn, this is the
14 type of assessment they're doing. And they're now finding
15 the additional pressure areas and providing care and
16 treatment.

17 And during this time you'll learn -- so from --
18 after November -- or November 30 to December 1st, the
19 decision is made that hospice may not be the right answer.
20 Mrs. Boice has needs that are greater than can be -- can be
21 provided at Emerald Hills and the decision is made to move
22 her to skilled nursing, over to that -- that other -- you
23 know, that other route, the healthcare route.

24 And we'll show you during the course of the trial
25 calls and e-mails, and backs and forths, and requests for
26 orders, and requests for information that are taking place
27 during the next four days, trying to find available beds.
28 All these things are going on in a coordinated effort to

1 move Mrs. Boice to her next community.

2 On December 4th, 2008, you'll learn Mrs. Boice was,
3 in fact, transferred from Emerald Hills to Foothill Oaks,
4 which is a skilled nursing facility. And she had multiple
5 pressure areas on her body. Those that had been first
6 discovered by and reported by the Emerald Hills
7 non-healthcare staff on the 30th, those that had been
8 assessed and treated by the nurses from Kaiser on the 1st
9 and thereafter, in that interim, and they get assessed and
10 treated there at Foothill Oaks.

11 Could you pull up 41, please.

12 Now, part of the transfer paperwork, you're going to
13 learn in this case, included a note from Alicia Parga, the
14 Memory Care Director. This is the person that the evidence
15 will establish did not have the educational criteria
16 that -- that Emeritus generally looks for for someone
17 that's going to be a memory care director. Although, of
18 course, there is no formal criteria by way of regulation.

19 But at any rate, this is a note by Alicia Parga.
20 And she -- as she's preparing the paperwork and sending
21 Mrs. Boice to her next facility, she includes a note,
22 you'll learn, where she's addressing Bennie, who is going
23 to be the receiving nurse. Alicia tells Bennie:

24 Here are the orders for Joan
25 Boice. Here are a few more FYIs.
26 Joan will/can express pain by
27 moaning or frowning. Joan can be
28 resistive to changing, slightly,

1 but responds well when you make
2 her laugh. She is dependent with
3 eating and drinking fluids. She
4 also pockets food.

5 Now, "pockets food." Let's talk about that. It
6 sounds like it goes in the pocket here (indicating).
7 Actually, that's a term -- it's a significant medical term.
8 It means that when one eats, they don't swallow the food,
9 they pocket it in their cheek.

10 And on November 4th, 2008, as a matter of fact, when
11 Mrs. Boice went to go see Dr. Awan, you're going to learn
12 she had food in her cheek.

13 So in addition to losing the ability, you'll learn,
14 to move -- to use her right side of her body, she developed
15 an inability -- or a decrease in her ability to swallow,
16 and even a lack of desire to eat. All typical findings,
17 you'll learn, of advanced Alzheimer's disease, compounded
18 by strokes.

19 But you're going to learn in this case that that --
20 those non-healthcare providers at Emerald Hills were
21 attuned to Mrs. Boice. They knew how to communicate with
22 her. They knew how to make her laugh to get her to
23 cooperate. That's what the evidence is going to show about
24 the kind of people and the kind of care that was being
25 delivered to Joan Boice throughout her stay at
26 Emerald Hills, and the kind -- the expectations of care
27 that run throughout the Emeritus organization.

28 The day after Mrs. Boice was transferred to

1 Foothill Oaks --

2 Would you pull up number 49, please. Slide 49.

3 She is now in a healthcare environment and they
4 start doing healthcare assessments. On December 5th, she
5 has what's called a dysphagia evaluation. That's a
6 swallowing evaluation. And in this process, they learn
7 that she's having very -- a very difficult time swallowing
8 her food. And they put her on a puree diet, meaning
9 everything is blended, you know, it's all liquid.

10 And so looking back, you're going to learn that in
11 addition to developing those wounds on her body, Mrs. Boice
12 lost some weight, and she lost the ability to move her
13 right arm and her right leg. And the evidence in this case
14 is going to establish that those changes to Mrs. Boice, who
15 was 81 years old, which isn't that old, unless you have had
16 years and years of a debilitating disease, being compounded
17 by neurological problems. But those changes, the evidence
18 is going to establish, was because of her healthcare -- her
19 health, her diseases of aging.

20 The evidence is going to establish that this was not
21 an example of staff recklessly neglecting, not caring about
22 Joan Boice. The evidence is compelling to the opposite.
23 You will see there was a concerted effort, joined efforts
24 between the family, the staff at Emerald Hills, and Kaiser
25 to try to do the right and appropriate thing for Mrs. Boice
26 as she was living out her life. That's what the evidence
27 is going to show.

28 I submit, ladies and gentlemen, that that column,

1 "the abuse column" is going to be filled with information
2 that -- and facts that show she was not abused.

3 She had wounds. They weren't infected. They were
4 clean and well kept. They were -- she was at risk for
5 them. They occurred. The nurses at Kaiser and all of the
6 care staff at Kaiser knew about them. And they were in
7 this instance not preventable.

8 I want to spend a few minutes talking about this
9 notion of corporate malfeasance of Emeritus as a bad
10 operator.

11 THE COURT: Can we get the lights, please.

12 MR. REID: We talked about and you will see in trial
13 that the standards imposed by the State of California for
14 operating assisted living are not -- they're very low. And
15 Emeritus strives to be ahead of the game and to be an
16 industry leader. And they set job descriptions that
17 don't even -- they don't even exist in the State system.
18 But they set standards for themselves that they want their
19 communities to meet, with the understanding that what we're
20 talking about is delivering basic care. It's not about
21 being educated. It's not about -- you'll hear it's not
22 about, you know, being top of your class. It's about the
23 ability to be patient and caring.

24 In addition to the one requirement that the State
25 has about -- that the executive director needs to have two
26 years of college, there's also training requirements, which
27 you'll learn Emeritus sets their bar much higher. And, in
28 fact, the evidence is going to establish that training is a

1 regular ongoing event at communities like Emerald Hills.

2 In addition to the patient-specific training that
3 went on and on with Mrs. Boice during her residency, you're
4 going to receive evidence in this case that on a monthly
5 basis training was taking place at Emerald Hills. And I'm
6 not going to go through all of 'em. But as an example,
7 you're going to learn that as of December 13, 2007 and
8 December 14, 2007, med tech training was taking place at
9 Emerald Hills. On December 16th, 2007, reporting of elder
10 abuse training took place. There was training in January
11 and in February and in March, fall safety, timely
12 responding to pendant calls.

13 Every resident in Emerald Hills has a pendant that
14 they can push a button and ask for help and the system will
15 indicate where they are and who they are. And the staff
16 have pagers that they can respond immediately.

17 There's fall safety training taking place.

18 Mandated reporting of elder abuse. Let's talk about
19 that for a minute.

20 You're going to learn in this case that in addition
21 to laws designed to remedy abuse of the elderly, there are
22 laws designed to protect the elderly from neglect and
23 abuse. And those laws, you'll learn, place a burden on
24 care providers, healthcare providers and non-healthcare
25 providers to report, under threat of criminal prosecution,
26 any time they suspect that an elder person has been
27 neglected or abused.

28 These people are called mandated reporters. And

1 every person that works at Emerald Hills is a mandated
2 reporter. And every one of these people at Kaiser is a
3 mandated reporter. And every one of these care staff at
4 Foothill Oaks is a mandated reporter. They're all mandated
5 reporters. And they can be prosecuted, you will learn, if
6 they suspect neglect and don't report it.

7 And in this case, you're going to learn, ladies and
8 gentlemen, that there was never a report of suspected
9 neglect or abuse by any person involved in Mrs. Boice's
10 care. Even the nurse who went to Emerald Hills on
11 December 1st and saw the wounds that had developed over
12 that -- overnight or two nights didn't report suspected
13 neglect. Even the nurse at Foothill Oaks, you'll learn,
14 that received Mrs. Boice and saw the wounds didn't report
15 suspected neglect or abuse. The doctors who knew that she
16 had lost weight didn't report those things. There was
17 never a report of suspected neglect or abuse. And the
18 evidence is going to establish that that's because it
19 didn't happen. It's because it was the disease.

20 And our staff at Emerald Hills were trained on that,
21 repeatedly, including May 23rd, 2008.

22 September 12th, 2008, safety training.

23 September 26th, 2008, elopement training.

24 October 7th, 2008, abuse prevention project
25 training.

26 October 10th 2008, CPR results. You heard about the
27 CPR.

28 December 4th, 2008, fire safety standards.

1 December 10th 2008, "Join Their Journey."

2 Alzheimer's and dementia training.

3 So there will be evidence in this case, ladies and
4 gentlemen, that training is conducted and an important part
5 of the culture of Emeritus.

6 Staffing. You're going to hear evidence about
7 staffing. Recall when I drew that board, acute care
8 hospital, three nurse -- three patients to one nurse.
9 Skilled nursing facility, 3.2 nursing hours per patient a
10 day. In assisted living, the only requirement for a
11 building with the population of Emerald Hills is that they
12 must have one person in the building awake at night.
13 That's the minimum staffing level.

14 And now there's not going to be any evidence to
15 suggest that that would be good enough. But that's the
16 minimum and that's the requirement. It's left to the
17 operators to comply with that other requirement of having
18 sufficient staff to meet the needs of the residents.

19 But recall, we have -- you're going to learn, we
20 have residents like Myron Boice who is independent, comes
21 and goes, drives his car, goes to the salad bar. He is
22 independent. And that is a large portion of the assisted
23 living population. And then there are those residents like
24 Joan Boice who need more help.

25 So staffing a building, you're going to learn,
26 ladies and gentlemen, is not a science as much as it's an
27 art. It's about, you'll learn, trying to assess that
28 amount of need that the residents have -- which can never

1 be fully quantified. There isn't a formula. Although, we
2 try to put it in a formula. But there's that amount of
3 need and then that amount of staff (indicating) to meet
4 those needs.

5 You're going to learn that in this case, in the
6 Memory Care Unit, during the time that Mrs. Boice was
7 there, the -- there was, on average, 17 residents in Memory
8 Care, not all of them like Joan Boice, but with dementia.
9 And they needed to be in that delayed egress environment,
10 meaning they can't just push the door and go out without an
11 alarm going off.

12 During the time that Mrs. Boice was there, there
13 was, on average, seven caregivers assigned to the Memory
14 Care Unit per day, with an additional 12 caregivers on the
15 assisted living side. And we call it a "side." It's just,
16 you know, down the hall.

17 So there was a good number of staff, you'll learn,
18 at Emerald Hills when Myron Boice and Joan Boice lived
19 there.

20 In this case, I expect you'll hear evidence from the
21 plaintiffs saying -- asserting that that wasn't enough to
22 meet the needs of the residents. And I expect that their
23 evidence is going to be that seven caregivers wasn't
24 enough, but nine would have been. Nine caregivers would
25 have been sufficient, according to plaintiffs' expert,
26 you'll learn, to meet the needs. So we're talking about a
27 margin of error here.

28 Emerald Hills was staffed. They were staffed with

1 trained and caring people, who were attuned, you'll learn,
2 to Mrs. Boice's needs, who participated in taking care of
3 her, and shepherding her while she was developing strokes
4 and her dementia was deteriorating. (Verbatim.)

5 That's what the evidence is going to establish.

6 And I have snippets of depositions, but I'm not
7 going to show them. We're going to bring the witnesses in,
8 and you can meet these witnesses and evaluate the entirety
9 of their testimony. You'll see these folks and you'll hear
10 these folks. And you'll hear their entire testimony, not a
11 snippet here and a snippet there.

12 So during the course of this trial, as you fill up
13 the columns wrongful death, and you fill up the columns
14 elder abuse, I promise to try not to put very much in the
15 NA column. We're going to deliver to you facts and
16 evidence, and in an impartial, non-passionate manner. And
17 you folks will have an opportunity to judge the true
18 quality of the care delivered.

19 And at the end of that, ladies and gentlemen, I
20 assert that you're going to find that Emerald Hills did not
21 cause Mrs. Boice's death. We saw the death certificate.
22 And you're going to find that she was not neglected or
23 abused while at Emerald Hills.

24 And one final thought I want to share with you, one
25 piece of evidence that you will learn about.

26 Could you -- are you able to pull up that one?

27 MS. FORD: No.

28 MR. REID: Okay. We talked -- you've heard that the

1 Department of Social Services is the agency that oversees
2 the operations. And you have heard there will be evidence,
3 apparently, that they only do inspections once every five
4 years.

5 THE COURT: I'm sorry. Is this the document he
6 wanted?

7 MS. FORD: It is. But I'm not sure that it's
8 exactly the way he wants it, your Honor.

9 THE COURT: Okay.

10 MR. REID: That's fine. I'll just describe it.
11 That's fine. Thank you.

12 THE COURT: Take it down then.

13 MR. REID: Is it --

14 MS. FORD: It's down.

15 THE COURT: All right. Thank you.

16 MR. REID: There will be evidence in this case that
17 on April 10, 2008, an unannounced -- I don't know what a
18 five annual year visit is -- a annual visit occurred. It's
19 the five year anniversary. An unannounced visit by the
20 Department of Social Services took place at Emerald Hills.
21 The evidence is going to establish that.

22 The evidence is going to establish that the licensed
23 program analyst with the Department of Social Services, on
24 April 10th, 2008, months before Mrs. Boice moved in,
25 reviewed the facility file, toured the facility inside and
26 out, inspected the Dementia Unit, observed staff
27 interacting with the residents, feeding them, keeping --
28 having recreation activities; that all of the current staff

1 files were reviewed. The surveyor looked at the kitchen
2 and ensured that all of -- that there was sufficient
3 supplies and food. Found that it was clean. And went
4 through the staff files, the resident files, and the
5 resident medication records, looking for compliance or
6 noncompliance.

7 And you're going to learn that when they do -- when
8 a licensed program analyst that does -- any time they go
9 into a assisted living community, they check staffing. And
10 on April 10th, 2008, Emerald Hills got, you will learn, an
11 almost clean bill of health. Some minor -- there was some
12 supplies -- cleaning supplies that weren't properly stored.
13 And there was a bottle of aspirin that should have been
14 somewhere else. But that -- that survey did take place
15 just months before Mrs. Boice moved in.

16 The diseases of aging are despicable sometimes. And
17 there's no -- there will be no dispute that what the Boice
18 family had to go through was not pleasant and it's not what
19 we would want. But it will be clear at the end of this
20 trial, I believe, ladies and gentlemen, that Emerald Hills
21 fulfilled its obligations, its staff did what they were
22 able to do as part of this team that was shepherding her
23 through her journey.

24 Thank you very much.

25 THE COURT: All right. Ladies and gentlemen, I
26 wanted to remind you when I release you until tomorrow
27 morning at 9:00 o'clock that what you have heard this
28 morning and this afternoon are the opening statements of

1 counsel. The real taking of evidence, from which you will
2 ultimately make your decision, will begin then tomorrow
3 morning at 9:00 a.m.

4 As you promised, not only me but counsel, you will
5 have not made up your mind based on what you have heard
6 today. You will wait and listen to all of the evidence and
7 then evaluate it at the conclusion of the evidence.

8 Leave your notebooks on the chairs. Remember the
9 admonitions. I'll see you promptly at 9:00 a.m. tomorrow
10 morning.

11 And if counsel could wait just a few minutes,
12 please.

13 You can leave. Thank you.

14 **(The following proceedings were then had in open**
15 **court, outside the presence of the jury.)**

16 THE COURT: If everyone could please be seated.

17 We have just a few housekeeping matters that we need
18 to take care of today.

19 Miss Clement, are all three of your clients here
20 today?

21 MS. CLEMENT: Yes, they are, your Honor. Yes, they
22 are, your Honor.

23 THE COURT: Okay. All right. Could they please
24 stand.

25 MS. CLEMENT: Yes.

26 THE COURT: And could the Court recognize each of
27 them, starting with the woman on the end.

28 MS. CLEMENT: Nancee -- or do you want --

1 MS. BOICE: Nancee Boice.

2 THE COURT: Okay.

3 MR. MARK BOICE: I'm Mark Boice.

4 MR. ERIC BOICE: Eric Boice.

5 THE COURT: All right. As the family is aware,
6 there was a stipulation filed re the order should the jury
7 come back with a wrongful death verdict. Miss Clement
8 filed that based on a discussion I had with her on the
9 record, indicating that each of you understands that you
10 are entitled to a separate enforceable judgment in the
11 action on the claim, which would allow you to choose to
12 enforce it, if you wished to, individually. And you would
13 be each entitled, as you heard, to a separate judgment in
14 your individual name in this case, but that you are
15 choosing voluntarily and freely to elect to waive that and
16 to ask the jury, should it come to that, to enter one total
17 judgment amount on behalf of the three of you, which would
18 then mean that the three of you would then, amongst
19 yourselves and without benefit of the Court, would
20 apportion those amounts, if that is how we are choosing to
21 proceed.

22 Is that it, Miss Clement?

23 MS. CLEMENT: Yes. That is the family's decision.

24 THE COURT: So essentially, if you -- I'm not saying
25 this would ever happen, but if you got into a dispute
26 between the three of you as to who should get what, you
27 have essentially waived Court intervention with respect to
28 that. And I wanted to make sure each of you completely

1 understood that.

2 So, Miss Boice, do you understand and agree to that?

3 MS. BOICE: Yes, I do.

4 THE COURT: And, Mr. Eric Boice, do you understand
5 and agree to that?

6 MR. ERIC BOICE: Yes, your Honor.

7 THE COURT: And, Mr. Mark Boice, do you understand
8 and agree to that?

9 MR. MARK BOICE: Yes, your Honor.

10 THE COURT: All right. Thank you. You may be
11 seated.

12 Also, last week, I neglected to discuss the fact
13 that plaintiffs had filed a request to lodge the original
14 deposition exhibits for use at trial.

15 Now, Miss Clement, are those separate from the
16 deposition transcripts?

17 MS. CLEMENT: Yes. You know, the way our court
18 reporter does it is that she brings the exhibits to every
19 single deposition. So rather than attaching them to the
20 transcripts, she creates binders. And they're just one
21 through eternity. And so when we lodged the original
22 depositions, we made the mistake of forgetting to bring the
23 transcripts with them. So that's what that was about, your
24 Honor.

25 THE COURT: Any objection to her lodging those
26 separately?

27 MR. REID: Not as long as we have room for them,
28 your Honor. We filled up the court.

1 No, I have no objection.

2 THE COURT: She has the certification that they are
3 true and correct?

4 MS. CLEMENT: Yes, yes. They have all been sealed
5 up.

6 THE COURT: Okay. And where are those?

7 THE CLERK: I think they're in the corner there.

8 MS. CLEMENT: Do you want me to look, Judge?

9 THE COURT: Well, when we go off the record --

10 MS. CLEMENT: Yes. They're right over here on the
11 right. And they're sealed.

12 THE COURT: Okay. I think we've already moved all
13 of the deposition transcripts to this shelf over here
14 (indicating).

15 Are you intending to use any of those exhibits in
16 your examination?

17 MS. CLEMENT: You know, I think it would be very,
18 very rare and unlikely that we do. Most of them have
19 become trial exhibits. But there might be -- you know,
20 just in the abundance of caution, we brought them just in
21 case.

22 THE COURT: Okay. Then we'll leave them where they
23 are. But I would ask that prior to any testimony where you
24 know you are going to be using those exhibits, please take
25 the time to work with the court attendant to get them out
26 and ready to go so we're not shuffling through them.

27 MS. CLEMENT: Sure.

28 THE COURT: So the Court will allow the lodging of

1 the original deposition exhibits.

2 Okay. I think that takes care -- I did also receive
3 the association of counsel, signed by Miss Clement.

4 And I am assuming that this is agreed to by your
5 clients as well.

6 Is that correct?

7 MS. CLEMENT: Yes. Yes. That's correct, your
8 Honor.

9 THE COURT: All right. Then the Court has accepted
10 that for filing today.

11 Is there anything else that we need to talk about
12 until we break until 9:00 o'clock tomorrow morning?

13 MR. REID: I don't believe so, your Honor.

14 MS. CLEMENT: I don't think so.

15 THE COURT: All right. Thank you very much then.
16 We are in recess.

17 COUNSEL IN UNISON: Thank you.

18 (Evening recess.)

19 (Change of reporters.)

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